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IN THE HIGH COURT OF DELHI

RFA No. 586/2003

Judgment reserved on: 9th May, 2006
Date of decision : 25th May, 2006

GOVT. OF NCT OF DELHI & ORS.... APPELLANTS
through : Ms. Avnish Ahlawat, Advocate.

VERSUS

DR. H.L. BHOLA .... RESPONDENT
through : Mr. V.M. Issar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE S.L. BHAYANA

S.L. BHAYANA, J.

For orders, see RFA No.341/2003.

(S.L.BHAYANA)
JUDGE

(SWATANTER KUMAR)
JUDGE

May 25th, 2006
m

IN THE HIGH COURT OF DELHI

Judgment reserved on: 9th May, 2006
Date of decision : 25th May, 2006

(1) RFA No. 341/2003

DR. H.L. BHOLA .... APPELLANT
through : Mr. V.M. Issar, Advocate.

VERSUS

A. & U.TIBBIA COLLEGE BOARD & ORS.. RESPONDENTS
through : Ms. Avnish Ahlawat, Advocate.

AND

(2) RFA No. 586/2003

Judgment reserved on: 9th May, 2006
Date of decision : May, 2006

GOV.T. OF NCT OF DELHI & ORS.... APPELLANTS
through : Ms. Avnish Ahlawat, Advocate.

VERSUS

DR. H.L. BHOLA .... RESPONDENT
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CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be referred in the Digest? No

S.L. BHAYANA, J.

By this common judgment, we will dispose of the two Regular First Appeals bearing Nos. 341/2003 and 586/2003 which have arisen out of the same judgment and decree passed by the learned Additional District & Sessions Judge, Delhi dated 17.07.2002 wherein the learned Additional District Judge has decreed the suit of the plaintiff for a sum of Rs.50,000/- with 9% pendentelite and future interest till its realization. It was further held that defendants No.1, 3 and 4 are jointly and severally liable to pay the aforesaid amount. The appellant has preferred this appeal against the Order, as the learned Trial Court has not decreed the

suit of the plaintiff for a sum of Rs.4,00,000/- which was filed by the appellant before the learned Trial Court and has instead decreed his suit for a sum of Rs.50,000/- only.

The brief facts of the case of the appellant are that the appellant was employed as Lecturer in A. & U. Tibbia College, Delhil. He was allotted Flat No. A-5/18 by the college authorities for his residence. The flat comprised of two bed rooms, drawing cum dinning, latrine, bath room, store and gallery etc. This flat was situated on the first floor whereas the ground floor flat was occupied by Dr. Yasin Ahmed and the flat number of the said flat was A-5/20. At relevant time, flat No. A-5/20 on the ground floor was under repair but its occupier Dr. Yasin Ahmed had shifted his entire luggage in one room of the ground floor flat. On 07.07.1990, the flat on the ground floor collapsed and consequently, the flat occupied by the appellant on the first floor also collapsed. It is case of the appellant that defendant No.1 had neglected to carry out the repairs in the flat of the appellant despite repeated requests made by him in writing to

defendant No.1. As a result of the willful negligence on the part of defendant No.1, the condition of the flat became precarious. The appellant further stated that defendant No.1 had not deliberately repaired his flat as he was to retire on 01.03.1993 and the defendants had the apprehension that the appellant may not vacate the flat even after his retirement. It is the case of the appellant that the entire household goods of the appellant were buried in debris on account of sudden collapse of the flat on 07.07.1990 as a result of which he suffered damages to the tune of Rs.4,90,000/-.

In the written statement filed by the defendants, they have taken the plea that no notice U/s.80 of the Code of Civil Procedure was served upon them and the suit is therefore liable to be dismissed. They have further stated that they had asked the appellant to vacate the flat as extensive repair works are to be carried out and the same could not be carried out without the flat being vacated. Then the notice was given by P.W.D. authorities to defendant No.1 and defendant No.1 served notice to the appellant to

the fact that the flat was in dangerous condition and he was directed to vacate the flat immediately to avoid any danger to the life and property of the occupants. The said notice was served upon the appellant in the first week of June, 1990. But despite the notice, the appellant did not vacate the flat and ultimately the flat collapsed on 07.07.1990. They have denied the averments raised by the appellant that the repair work was not done by the defendants as they were apprehending that the appellant will not hand over the flat to them after his retirement. It is further submitted by the defendants that the appellant had not suffered any loss or damage. They have further stated that the appellant had already removed his goods from his house and had kept the goods in some other place and no loss or damage was caused to the property of the appellant. After going through the pleadings of the parties, the learned Trial Court framed the following issues :

1. Whether the plaintiff is entitled to claim the suit amount as damages from the defendants No. 1, 3 & 4? OPP.

2. Whether the plaintiff is entitled to claim interest if so at what rate and for what period? OPP.

3. Whether the suit against the defendant No.3 is not maintainable? OPD.

4. Whether the suit is not maintainable in the present form as notice U/s.80 of the CPC has not been given? OPD.

5. Whether the suit is bad for mis-joinder of the parties? OPD.

6. Whether proper court fee has not been paid on the plaint if so its effect? OPD.

7. Relief.

The learned Trial Court decided issue No.1 in favour of the plaintiff and against the defendants. However, the learned Trial Court further held that there was negligence on part of the defendants as adequate precautions were not taken while making repairs and also no alternative accommodation was allotted to the appellant. The learned Trial Court further held that there was contributory negligence on the part of the plaintiff also as he was

well aware of the fact that the flat was in dangerous condition and he was required to vacate the same but he did not vacate the same in time. The learned Trial Court has further held that only two bed rooms had collapsed but the items which are mentioned to have been damaged are two double beds, diwans, four chairs, sofa set, steel almirah, wooden almirah. All these items are so big that they could have easily been seen in the debris but the photographs placed on record by the appellant do not show all these items in the debris. Even television has been shown to be totally intact. One two-in-one is also shown to be intact which was lying on a stone slab. Even sofa set has been seen in the photograph but the same is not damaged. Ex-parte injunction was granted to the appellant for protection of the debris on 01.07.1994. The learned Trial Court had also appointed a Local Commissioner with directions to go to the spot and prepare the inventory of the belongings of the plaintiff which have been lying in debris. This order was not complied with by the plaintiff and he did not take the Local Commissioner to the

spot to prepare the inventory. The list of the articles being damaged in this collapse is very large but none of these damaged goods have been shown in the photographs placed on record by the appellant. The *malba* was also removed by the orders of the Court on 18.09.1996 but no photographs were taken of the *malba* even at that time. Although, opportunity was given to the appellant to take the photographs. It is an admitted case of both the parties that there was no loss of life in this happening. The learned Trial Court has held that it appears that the appellant had shifted his entire goods to some other flat as he was well aware that his flat is in dangerous condition. The learned Trial Court had also discussed about the report of the valuer and has held that the same does not inspire confidence and learned Trial Court came to the conclusion that in the totality of circumstances and in the interest of justice, the appellant can be awarded compensation to the tune of Rs.50,000/- only. The learned Trial Court has also decided issue No.2 in favour of the plaintiff and against the defendants and has granted interest

@ 9% per annum, pendentelite and future till the realisation of the amount. Issue Nos. 3, 4, 5 and 6 have also been decided in favour of the plaintiff and against the defendants and ultimately the learned Trial Court has decreed suit of the plaintiff for a sum of Rs.50,000/- with 9% pendentelite and future interest till the realisation of the amount.

We have heard learned counsel for the appellant and have perused the file carefully. The learned counsel for the appellant has stated that he has suffered loss and damage in respect of his household goods to the tune of Rs.4,00,000/- but the learned Trial Court has awarded only Rs.50,000/- to the appellant. The learned Trial Court has not applied its mind while deciding the suit of the plaintiff. The plaintiff is entitled to the suit amount of Rs.4,00,000/- against the defendants. It is further submitted that so many items belonging to the plaintiff are damaged which included steel dinner set, imported crockery, wine glass gold (imported), steel almirah, wooden almirah, steel chairs, two double bed, two sets of

diwans, two sofa sets (four seater), two dining tables with six chairs, steel body walker, cooler, VCR, cycle, refrigerator, etc. The learned Trial Court has not taken into consideration these facts regarding the damage caused to the property of the appellant and has awarded Rs.50,000/- only. He has further stated that the impugned order may be set aside and a decree in the sum of Rs.4,00,000/- towards loss and damage of the property may be passed in favour of the plaintiff and against the defendants.

On the other hand, learned counsel for the respondents has submitted that appellant has failed to prove any loss to his goods and property. The appellant had also shifted all his household goods to another flat as he was informed by the P.W.D. authorities that his house was in a dangerous condition and for that reason, he had shifted all his goods to another flat and when this flat collapsed not a single item of household goods was lying inside the house and that no damage or loss has been caused to the household goods of the appellant. He has further submitted that the appellant has filed a

false suit against the defendants before the learned Trial Court. He has further submitted that the defendants had informed the appellant well in time that the condition of the house was very dangerous. The occupant of the ground floor Mr. Yasin and the occupant of the first floor who is the appellant herein were both informed by the P.W.D. authorities regarding the condition of their flat and they were even informed that their flats need extensive repairs and they need to vacate their flat so that repairs may be undertaken by the P.W.D. authorities. Despite letters written by the respondents, the appellant had failed to vacate his flat, however, he had shifted all his goods to another flat and the appellant had suffered no loss or damage in respect of the household articles. Learned counsel for the respondents has prayed that appeal filed by the appellant may be dismissed.

We have heard the arguments advanced by counsels for both the parties and have gone through the record.

We have gone through the statement of PW-1

Dr.H.L.Bhola, plaintiff / appellant in this case. He has deposed before the Court that he was working as a Lecturer in Tibia Collage and was allotted quarter No.A-18, Tibia Collage, Karol Bagh, New Delhi about 30 years back where he was living along with his family members. The flat was allotted on the first floor which comprises of three bed rooms, Varandaha, Barsati room, kitchen, bathroom, store rooms, latrine etc. The flat bearing No.A-20 was on the ground floor, in which Dr.Yasin was residing. He had been writing to the defendants to get his flat repaired but they neglected to repair his flat. Repairs were going on in the flat bearing No.A-20 on the ground floor. He was to retire in the year 1993.. His flat suddenly collapsed on 7.7.1990 at 11.00 am when his family members were inside the flat. None of his family members received injuries in this incident. However, his goods have been damaged due to collapse of the flat which were lying in debris. He prepared a list of the damaged goods on 13.1.91 and gave a copy of the same to the authorities of Tibia Collage. He has not filed any document

regarding the proof of purchase of the articles for which he had claimed damages.

Whatever photographs were taken by him have been placed on record. He had not shown any document to Mr.D.P.Singh regarding the ownership of the value of articles at the time of getting valuers report prepared. He had admitted that none of his family members received any injuries when his flat collapsed.

He had taken photographs of the said collapsed flat showing all his household goods which were buried under the debris. It has come on record in the evidence of other witnesses that the plaintiff, his wife and three children were residing in the said flat but none of the members of the family received any injury in this incident which shows that the plaintiff was not residing in that flat at that time and he must have moved to some other place before the incident. The plaintiff has also placed on record the photographs. We have seen all these photographs placed on record by the plaintiff. Not many of the articles mentioned by the plaintiff are seen in debris

regarding which photographs have been taken. In one photograph, one two-in-one has been shown which seems to be intact. In one photograph, one sofa is lying with a torn cloth. In another photograph, one television is lying displayed on a stone and is not found buried in the debris and seems to be intact. The photographs only show the broken bricks and debris of the flat which collapsed and not many articles are shown lying damaged in the debris. In one photograph, one cycle is seen in the damaged condition in the debris of the flat. So, from all these photographs we can only make out that the plaintiff must have removed all his goods from the said flat when it collapsed and not many articles were lying in the said flat at the time the flat collapsed. We have also gone through the statements of the other witnesses examined by the plaintiff. They are also of not much help to the plaintiff as they are not able to tell as to how many articles belonging to the plaintiff were damaged in that collapse. We have also gone through the statement of PW2 B.P. Singh who is the valuer and has submitted his report regarding

the articles damaged in this incident. He has admitted before the Court that he had not taken any photographs at the spot but the photographer was brought by the plaintiff and his valuation report is Ex.PW1/19. He has made a mention of the photographs in para 4 page 4 of his valuation report. The photographs mark Z1 to Z35 bear his stamp on the reverse of the valuation report. In the cross examination, he has admitted that he had seen proof of the articles but he had not annexed the copy of those documents qua proof of his ownership with the report. He had not taken photocopies of ownership of those documents from the owner. He does not recall as to from where these articles were purchased by the plaintiff and what was its original price nor did he know the date of purchase of these articles. He also cannot say as to of which make the crockery, electrical appliance and steel furniture were. From the evidence of PW2 B.P. Singh, it appears that he had given the valuation report at the instance of the plaintiff and he did not verify any document with regard to the ownership and with regard to the price of the articles

regarding which he had given the report. He has mentioned about the photographs mark Z1 to Z35 but in all these photographs we have not been able to find any valuable articles having been damaged nor the same have been shown in the debris. We have neither seen fridge nor television nor any crockery item nor any other valuable item which was damaged in this collapse. However, some of the articles have been shown damaged in these photographs for which the learned Trial Court has already awarded compensation to the tune of Rs.50,000/- to the plaintiff. In our opinion, the amount of damages awarded by the learned Trial Court to the plaintiff is justified and it does not need any interference by this Court. The learned counsel for the plaintiff has failed to prove on record that goods worth Rs.4,00,000/- were damaged in this incident. We have gone through the statement of DW1 Dr. Mrs. Jayantvir Kaur Taneja who was officiating principle of Tibbia College at the relevant time. She has deposed before the Court that the staff quarters in Tibbia College bearing No. A-5/20 situated on the ground floor occupied by

Dr. Yasin Ahmed and quarter No.A-5/18 situated on the first floor occupied by Dr. H.L. Bhola were in a very dilapidated condition and these quarters needed repairs. The P.W.D. was responsible for the maintenance and repairs of these quarters. The P.W.D. Executive Engineer had written a letter on 05.06.1990 to the college regarding the condition of the quarters and had asked for vacation of these quarters. Thereupon, the college authorities wrote a letter to Dr. Yasin Ahmed and Dr. H.L. Bhola directing them to vacate the quarters which was duly received by them. Dr. H.L. Bhola on receipt of the above letter took out his valuables and most of his articles and he kept the same at a safer place. Only few of the articles were lying in the quarter but he did not give possession of quarter to the college authorities. On 07.07.1990, both the quarters bearing No. A-5/18 and A-5/20 collapsed. There was no loss of life or property of Dr. H.L. Bhola.

The plaintiff was aware of the fact that the condition of his quarter was dangerous and he was asked by P.W.D. and by the

college authorities to vacate the flat so that repairs could be carried out but he refused to vacate the flat despite the letter received by him. The plaintiff has also admitted in the examination-in-chief and cross examination that he had received the letter dated 05.06.1990 wherein he was informed that the condition of his flat was dangerous but still he did not vacate the flat and ultimately, the flat collapsed on 07.07.1990. The learned Trial Court has rightly held in its judgment that the plaintiff is equally responsible for the collapse of the flat because he should have shifted his goods and articles to a safer place when he was informed that his flat was in a dangerous condition. After going through the evidence on record and after going through the documents and the photographs placed on record by the plaintiff, we are of the considered view that the learned Trial Court has rightly awarded damages to the tune of Rs.50,000/- to the plaintiff. The plaintiff has not been able to prove that his articles were buried in the debris due to collapse of the flat and the loss suffered by him was to the tune of Rs. 4,00,000/-. The plaintiff has

failed to prove his case beyond reasonable doubt before the learned Trial Court. We do not find any infirmity in the judgment of the learned Trial Court. Keeping in view the discussions made above, we are of the considered view that the learned Trial Court has given a very reasoned judgment. Both the parties have failed to point out any error in the judgment on fact and law. Both the appeals bearing Regular First Appeals Nos. 341/2003 and 586/2003 are, therefore, ordered to be dismissed. We uphold the impugned judgment and decree passed by the learned Trial Court in this case.

The parties are left to bear their own costs. Trial court record be sent back. File be consigned to record room.

(S.L.BHAYANA)
JUDGE

(SWATANTER KUMAR)
JUDGE

May 25th, 2006
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CM 9698/06 for Release of F.D.R.